IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23/04/2004

Coram

The Honourable Mr. Justice P.D. DINAKARAN
and
The Honourable Mr. Justice T.V. MASILAMANI

A.S. No.770 of 1995
and
C.M.P.No.9871 of 1995

P.V.Deenathayalan .. Appellant

-Vs-

1. Hanumantha Rao
2. Mrs.Anjana Rani .. Respondents

Appeal Suit against the judgment and decree made in O.S.No.7692 of 1
988 dated 25.7.1994 on the file of the I Assistant Judge, City Civil Court,
Madras.

!For Appellant : Mr.N.S.Varadhachari

^For Respondents : Mr.P.K.Sivasubramaniam

:JUDGMENT

(Judgment of the Court was delivered by T.V. MASILAMANI, J.)

The plaintiff in the suit, who failed before the trial Court, has
preferred this appeal challenging the judgment and decree passed by the I
Assistant Judge, City Civil Court, Madras on 25.7.1994.
2. The parties are referred to hereunder in the same order as they
were arrayed before the trial Court.

3. The plaintiff/appellant filed the suit for declaration and
recovery of possession of the suit property. The defendants/respondents
resisted the suit on the ground that the first defendant was in continuous,
open and adverse possession of the suit property for more than the statutory
period, that therefore he has prescribed title to the same by adverse
possession and that therefore the suit filed by the plaintiff is liable to be
dismissed.

4. The learned Assistant Judge, City Civil Court, Madras having

analysed the evidence, both oral and documentary adduced on either side and upon hearing the arguments of both parties dismissed the suit with costs. Hence, the appeal.

5. The averments contained in the plaint may be briefly stated as follows: The plaintiff's father Vijayaranga Mudaliar and three others purchased the suit property and the adjacent lands in court auction held in C.S.No.740 of 1920 on the file of the High Court, Madras by virtue of the sale certificate dated 28.11.1930 and thereafter they entered into a partition on 26.2.1931 in which an extent of 5 grounds and 1446 Sq.ft. fell to the share of Vijayaranga Mudaliar. Subsequently, the Corporation of Madras acquired an extent of 4 grounds and 346 sq.ft. for laying the road and Vijayaranga Mudaliar continued to be in possession and enjoyment of the remaining 1 ground and 1100 sq.ft. in his own right.
On 8.3.1973, Vijayaranga Mudaliar settled the property in favour of the plaintiff by means of a registered settlement deed dated 8.3.197 3 and thereafter the Corporation authorities acquired another extent of 420 sq.ft. out the said property leaving 3080 sq.ft. with the plaintiff. He obtained patta in respect of 1484 Sq.ft. and the remaining extent of 1596 sq.ft. is the suit property in respect of which he is entitled to get patta. The first defendant (since deceased) purchased the adjacent property and encroached upon the suit property measuring 1596 sq.ft. In spite of repeated demands made by the plaintiff, she has not vacated the encroached area of 1596 sq.ft., the suit property herein. Hence, the suit.

6. The averments in the written statement filed by the first defendant since deceased and adopted later by the defendants 2 and 3 are as follows: The first defendant purchased the property under sale deed dated 17.8.1950 from one Sundararajan and others and she was in possession and enjoyment of the suit property and also annexed the eastern adjacent property along with the property purchased under the said sale deed. The defendant obtained a patta in her favour in 1974 wherein the actual extent of the suit property was stated to be 1521 sq. ft. Though the plaintiff issued a notice as early as 1965 to the defendant making false allegations that the first defendant encroached upon the suit property, he has not taken any legal action so far.

7. The defendant who has purchased the property on the west of the plaintiff's property is entitled to 53' east to west on the north and 54' east to west on the south, 127' north to south, 14' east to west on south and 13' on the north. Since the defendant did not vacate the encroachment over the suit property even after the demand made by the plaintiff in 1965 and prescribed title by adverse possession, the suit for declaration and for delivery of vacant possession is not maintainable. Consequently, the defendant is the absolute owner of the suit property by adverse possession and in recognition of such possession and enjoyment, the suit property had been sub-divided as R.S.No.442/50 and patta issued therefor. Therefore the survey number given in the plaint is not correct. Hence, the suit is liable to be dismissed with exemplary costs.

8. On the above pleadings, the trial Court formed the following

issues for trial:-
(1) Whether the plaintiff has got title over the suit
property?
(2) Whether the defendant trespassed in the year 1985?
(3) Whether the defendant acquired title to the suit property by
adverse possession?
(4) Whether the plaintiff is entitled to the declaration and delivery
of possession prayed for?

9. On the basis of the recorded evidence and arguments of both sides, the trial Court held on the issue No.1 that the plaintiff has not proved the title over the suit property and on issue No.2, held that the defendant had not trespassed into the suit property in the year 19 85 as alleged in the plaint. Similarly, a finding was rendered by the trial Court on issue No.3 that the defendant acquired title to suit property by adverse possession and on issue No.4 that the plaintiff is not entitled to the relief of declaration and recovery of possession.

10. In the above circumstances, the following points arise for consideration in this appeal:

(1) Whether the plaintiff has got title to the suit property and
possession of the same within 12 years prior to the filing of the suit?
(2) Whether the first defendant acquired title to the suit property by
adverse possession?
(3) Whether the judgment and decree rendered by the trial Court are
liable to be set aside as prayed for?

11. Points 1 and 2: Admittedly, the suit property and the adjacent land in Survey No.442/3 at Perambur belonged to Vijayaranga Mudaliar, father of the plaintiff and three others who purchased the same in auction sale held in C.S.No.740 of 1920 on the file of the High Court, Madras and the sale certificate is marked as Ex.A-1 dated 28.11.1930 . Similarly, it is not in dispute that Vijayaranga Mudaliar and other three purchasers entered into a partition deed under the original of Ex.A-2 dated 11.3.1931 whereby an extent of 5 grounds and 1446 sq. ft. fell to the share of the plaintiff's father and that subsequently, the Corporation of Madras acquired 4 grounds and 346 sq.ft. for laying the road.

12. Thereafter under registered settlement deed, original of Ex.A-4 dated 18.3.1973, Viajayaranga Mudaliar settled the said property in favour of the plaintiff and then again the Corporation Authorities acquired 346 sqft. leaving an extent of 1 ground and 1100 sq.ft. According to the plaintiff, he obtained patta in respect of 1482 sq.ft. and subdivided the same as T.S.No.442/73 and the remaining extent 159 6 sq.ft. is the suit property. Therefore, the learned counsel for the plaintiff has argued that since the plaintiff was entitled to the suit property, inasmuch as the first defendant encroached upon the same, the learned trial judge erred in non-suiting the

plaintiff.

13. On the contrary, the learned counsel for defendant has drawn the attention of this Court to Ex.A-6, copy of the notice issued by the plaintiff's counsel to the first defendant (since deceased) and Exs. A-28 to A-30, letter by the plaintiff to the Collector of Madras, reply of the Collector to the plaintiff and letter by the Collector to the plaintiff respectively in support of the contention that the defendant came into possession of the suit property long prior to the suit and prescribed title to the same by adverse possession. He has also drawn the attention of this Court to the documents under Exs.B-1 to B-5 and B-6, notices exchanged between the parties and Exs.B-8 to B-12 , the proceedings of the revenue authorities and the communications from the plaintiff and the patta issued in favour of the second defendant in respect of the suit property now measuring 1521 sq.ft. in T.S.No.442/50 in support of his further argument that the said documentary evidence coupled with the evidence of both the plaintiff and the second defendant as P.W.1 and D.W.1 respectively would go to show and prove that the first defendant had acquired title to the suit property by prescription by her continuous, open and adverse possession of the same for more than the statutory period.

14. A cursory glance of the evidence of P.W.1 itself will be sufficient to uphold the contentions put forth by the learned counsel for the defendants in this regard. P.W.1 has candidly admitted in his evidence that the first defendant came into possession of the suit property as early as 1952 when the adjacent property was acquired by the Corporation of Madras for laying the road, that he issued the notice under Ex.B-1 to the husband of the first defendant in 1965 calling upon them to vacate the encroachment, that he had inspected the encroached portion of the suit property personally in 1964, that the first defendant purchased the adjacent property in 1950 (vide) sale deed Ex.A-31 dated 17.8.1950, and that he is not aware when she annexed the suit property along with the property purchased by her. Similarly, he would admit that in 1974, the second defendant obtained patta under Ex.B-12 in respect of the suit property which had been subdivided as T.S.No.442/50.

15. It is in the evidence of D.W.1, the second defendant that the revenue authorities issued patta to the plaintiff only in respect of the portion of the property in his possession and refused to grant patta in respect of the suit property. Ex.A-29, the communication from the Collector of Madras to the plaintiff would go to show and prove that the evidence of D.W.1 in this respect is corroborated by documentary evidence also. In view of the above facts and evidence of the case, it is abundantly clear that the plaintiff was not in possession of the suit property within 12 years prior to the filing of the suit and therefore, we are of the considered view that the finding of fact rendered by the learned trial Judge has to be confirmed.

16. In this context, it is useful to quote the decision rendered by the Honourable Supreme Court in AIR 2003 S.C. 1905 (BONDAR SINGH v. NIHAL SINGH) exactly under similar facts and circumstances. In that case also, for

more than 12 years, the defendants were held to be out of possession of the suit property and that it was the plaintiff who proved title by adverse possession. Therefore it was held that by virtue of Article 65 of the Limitation Act, 1963 unless possession within 12 years prior to the suit is proved by the party claiming title and recovery of possession of the property, he has to fail. Applying the said principle of law enunciated therein, we are of the considered opinion that the plaintiff in this case has miserably failed to prove his possession of the suit property within 12 years prior to the filing of the suit and therefore we record a finding that the judgment rendered by the trial Court has to be affirmed.

17. In such view of the aspect of the matter, we hold under the above points 1 to 3 that the plaintiff has not proved title to and possession of the suit property within 12 years prior to the filing of the suit, that the second defendant has proved that he has prescribed title to the suit property by adverse possession and that therefore, the plaintiff/appellant is not entitled to any relief in this appeal.

18. Thus, the appeal is dismissed confirming the judgment and decree rendered by the trial Court. Consequently, C.M.P.No.9871 of 1995 is closed. However, the parties are directed to bear their respective costs.

Index: Yes
Website: Yes

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To

1. The I Assistant Judge, City Civil Court, Madras.
2. The Section Officer, V.R.Section, High Court, Madras.

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